can be accomplished in the mode of proceeding adopted, the bill will not be declared multifarious unless the course pursued is so injurious to one party as to make it inequitable to accomplish the general convenience at his expense. This is especially true when the mode adopted will prevent a multiplicity of suits.

4. GIFTS—*Delivery necessary.* A gift to be valid must be executed. Being without consideration, there must be an actual delivery by the donor to the donee, or to some one for him, of the thing given, or of the means of obtaining the subject of the gift without further act of the donor to enable the donee to reduce it to his own possession. Without such delivery the gift is incomplete, and cannot be enforced against donor, or his personal representative.

5. GIFTS—*Delivery—assignment without delivery.* If the assured in a policy on his own life, intending to make a gift thereof to a third party, without consideration, executes an assignment thereof in duplicate, whereby the benefit of said policy is assigned to such third party, and delivers one of the assignments to the insurance company for its protection and not as agent of the assignee, and fails to deliver either the policy or the assignment thereof to the assignee, this is an incomplete gift, and cannot be enforced by the assignee either at law or in equity.

ROBERT M. BURKE v. ALICE E. SHAVER.—Decided at Richmond, December 5, 1895.—*Cardwell*, J:

1. PROMISE OF MARRIAGE—*Illegal consideration.* A promise of marriage made in consideration of sexual intercourse is illegal and void.

2. INSTRUCTIONS—*Law applicable to the evidence.* Instructions which are founded on evidence in the cause should be given if they correctly propound the law as applicable to such evidence; but if not so applicable they should be refused, however correct they may be as abstract legal propositions.

3. CONTRACTS—*Repudiation of before time of performance—when suit may be brought.* If one repudiates his promise and declares that he will not be bound by it, the promisee need not wait for the time of performance to arrive, and if the engagement is general need not request its fulfillment, but may sue at once for the breach.

4. EVIDENCE—*Irrelevancy.* In an action for breach of promise of marriage it is not error to refuse to allow the defendant to introduce in evidence letters written by the plaintiff to another than the defendant, when it appears that the letters are not improperly indelicate and in no way compromise the character of the writer, for which purpose they were offered in evidence.

5. EVIDENCE—*Examination of witnesses—discretion of trial court.* The examination of witnesses lies chiefly in the discretion of the trial court, and its exercise is rarely, if ever, to be controlled by an appellate court. Much latitude of discretion should be allowed the trial court in the matter of recalling witnesses, and its action will not be reversed by an appellate court except for palpable error.

FERGUSON & HUTTER v. GROTTOES COMPANY.—Decided at Richmond, December 5, 1895.—*Harrison*, J:

1. COMMON LAW ACTION—*Venue—case at bar.* If a corporation, at its home office, employs an agent to sell its stock, and subsequently informs its agent by tele-

gram, in answer to a telegram from him, that it has no more stock for sale, but that he can continue to sell stock in conjunction with another, who had an option on all the stock left, and divide commissions with him; and the agent does proceed to make sales, this is not a new contract, but a modification of the original agreement, and an action to recover commissions on stock sold before and after the said telegram, must be brought within the jurisdiction of the home office, and cannot be maintained in the jurisdiction where the telegram was received by such agent.

TRUSTEES OF EMORY AND HENRY COLLEGE v. SHOEMAKER COLLEGE AND OTHERS.—Decided at Richmond, December 5, 1895.—*Harrison*, J:

1. WILLS—*Construction of, in case at bar.* A testatator, by his will, provided a fund for the education of certain persons. In declaring his purpose as to where they shall be educated, he says: "And then only in a college to be erected on a certain lot or parcel of land dedicated by me for that purpose in the town of Estillville, Virginia; but should the college aforesaid be not erected, then I will and direct that the annually accruing profits aforesaid shall be expended in as nearly equal proportions as may be at Emory and Henry and Martha Washington Colleges, in Washington county, Virginia, for the purpose aforesaid."

The testator died without having erected a college, or dedicated a lot on which it was to be erected.

Held: The fund should be paid to Emory and Henry and Martha Washington Colleges in the proportions mentioned in the will.

2. WILLS—*Construction of, in case at bar.* In another clause of the will above mentioned, the testator says: "I also set apart the sum of five thousand dollars, out of the sale of my real estate, for the purpose of erecting and building a college at Estillville, Virginia, to be paid by my executors, hereinafter named, when the same shall have been collected, to some person or persons duly authorized to receive the same, provided I do not build said college during my natural life."

Held: Taken by itself this clause would be void for uncertainty, but considering the will as a whole this fund should likewise be paid to Emory and Henry and Martha Washington Colleges, in the proportions first above mentioned.

3. INCORPORATED COLLEGE—*Right to sue.* An incorporated college may maintain a suit in equity for the construction of a will, in which it has an interest, and to have the trust created by the will properly executed.

THOMPKINS BY &C. V. GRIFFIN'S EXORS.—Decided at Richmond, December 5, 1895.—*Buchanan*, J:

1. WILLS—*Construction of, in case at bar.* A testator devised and bequeathed one-third of his entire estate, after payment of certain legacies, to a designated person. The next sentence in the same clause of the will is: "I mean by my entire estate, all of my life insurance, real estate, and personal property." The testator's life was insured in four different companies, and each of the policies was for the benefit of his wife, who had died after the policies were issued. The by-laws of three of the companies provided that, in the event of the death of the beneficiary before the assured, he might designate another beneficiary, and upon failure to do so, the proceeds should be paid to his relations in the order named in